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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th October 2011

No. 9586—li/1 (S)-6/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th May 2011 in Industrial Dispute Case No. 1/2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Eastern Steel & Power Ltd., Lahandabud, Jharsuguda and its workman Shri Balajee Kumar Satapathy was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 1 OF 2010

Dated the 18th May 2011

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of . . . First Party—Management
M/s Eastern Steels & Power Ltd.,
Lahandabud,
Jharsuguda.

And

Their Workman . . . Second Party—Workman
Shri Balajee Kumar Satapathy,
S/o Shri Mohan Satapathy,
At Cox Colony,
(Behind Mafidar Building),
P.O./Dist. Jharsuguda.

Appearances :

Shri S. K. Sahu	..	For the First Party–Management
Personnel & Administration.		
Self	..	For the Second Party–Workman

AWARD

This award arises out of the reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) in Memo. No. 11529 (4), dated the 29th December 2009 to adjudicate the schedule questions :—

“Whether the action of the management of M/s Eastern Steels & Power Ltd., Lahandabud, P.O. H. Katapali, Dist. Jharsuguda in terminating the services of Shri Balajee Kumar Satapathy, Personal Executive with effect from the 6th June 2007 is legal and/or justified ? If not, what relief Shri Balajee Kumar Satapathy is entitled to ?”

2. As per the statement of claim of the second party -workman, the second party- workman joined in the service of the first party-management since 24-6-2006. The M/s Eastern Steels & Power Limited is a Private Limited establishment (first party) is an Industry within the definition of Section 2(j) of the Industrial Disputes Act, 1947. The second party- workman was getting his salary/ wages from the first party- management on monthly basis. He was assigned duties of unskilled and skilled nature of work in the establishment and being directed by the first party -management he was also discharging his duty like a workman, as such the second party -workman is a workman as defined under Section 2(s) of the I.D. Act, 1947 and the dispute referred is an Industrial Dispute as defined under Section 2(k) of the I.D. Act. The second party- workman started his work since the date of his joining, i.e. 24-6-2006 in the first party -management and his service was continuous service without any break. He was terminated from the service with effect from 6-6-2007. The first party -management did not observe the procedure laid down in Section 25 F and 25 N of the Industrial Disputes Act, 1947. Thereafter the second party filed a complaint petition against illegal action of the first party before the District Labour Officer, Jharsuguda, who tried the best for conciliation of the dispute but due to the negative attitude of the first party- management the matter could not be materialised. Hence the reference. The second party made a prayer for an order of his retrenchment with effect from 24-5-2007 be declared as illegal and void *ab initio*. He also made a prayer for his reinstatement in service along with back wages from the date of his illegal termination of service, i.e. 6-6-2007 till the date of order as well as for other reliefs.

3. The written statement was filed on behalf of the first -party management stating that the second party- workman Shri Balajee Kumar Satapathy was employed by the first party -management as Personal Executive which is a managerial and administrative post on 24-6-2006. So the second party -workman Shri Balajee Kumar Satapathy was working as Personal Executive and drawing salary more than Rs. 1,600 per month. So, he is not a workman under Section 2(s) of the Industrial Disputes Act, 1947. On 11-11-2006 he misbehaved and threatened to Mr. Ajay Kumar Patra, Senior

Accounts Officer without any appropriate reason. The management took a lenient view and no action has taken against him after issuing the warning letter on his assurance to the management not to repeat such type of behaviour in future. The second party -workman was assigned some job by his H.O.D. but he refused to follow the instruction. In this regard, the management also has taken the lenient view of issuing warning letter to the second party despite of repeated assurances to amend his behaviour the second party -workman continued with the unruly attitude and indiscipline, irregularity and negligence increased day by day. The management issued a chargesheet to the second party -workman on 24-5-2007 and directed him to submit the explanation within 48 hours but the second party -workman did not pay any heed towards the said chargesheet. The second party was also advised by the first party -management to attend the enquiry committee on 4th June 2007 but he did not turn up nor attend before the Enquiry Committee. So, on presumption that he had nothing to say in the defence he was set *ex parte* and the Enquiry Committee started enquiry. On the recommendation of the Enquiry Committee his service was terminated on 6th June 2007 and he was communicated to collect his dues. The domestic enquiry was conducted *ex parte* and he was dismissed from service.

4. So, the first party -management made a prayer for an order that the second party- workman is not entitled to get any relief as he was working in the capacity of Personnel Executive which does not come under the definition of workman under Section 2(s) of the I.D. Act, 1947. The first party- management also made a prayer that second party -workman does not deserve any relief as he was indulged in indiscipline and unruly behaviour and repeated misconduct. Disobedience and negligence in his duties and made a prayer to dismiss this case as it is devoid of merit.

5. The second party -workman filed rejoinder denying the plea of the first party- management.

6. Out of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the domestic enquiry conducted by the management is fair and proper ?
- (ii) "Whether the action of the management of M/s Eastern Steels & Power Ltd., Lahandahud, P.O. H. Katapali, Dist. Jharsuguda in terminating the services of Shri Balajee Kumar Satapathy, Personnel Executive with effect from 6-6-2007 is legal and/or justified ?
- (iii) If not, what relief Shri Balajee Kumar Satapathy is entitled to ?"

7. Both the parties have filed documents in support of their respective cases. On behalf of the first party- management Shri Sanjay Kumar Sahu, the Senior Officer, Personnel Administration is examined as M.W.1. On behalf of the second party -workman, the second party- workman Shri Balajee Kumar Satapathy is examined as W.W.1.

FINDINGS

8. *Issue No. (i)* —In order to facilitate the case the issue No.(i), i.e. whether the domestic enquiry conducted by the management is fair and proper has been taken up as a preliminary issue and it was found that the domestic enquiry conducted by the management was not proper nor fair vide Order, Dt. 2-12-2010.

9. *Issue No. (ii)* : The management challenged the case of the second party- workman alleging that it is not maintainable as the second party -workman does not come under the purview of the I.D. Act. Let us scrutinise whether the second party -workman was discharging his duty of the first- party management as a workman. Admittedly, the second- party workman Shri Balajee Kumar Satapathy joined in the management on Dt. 24-6-2006. The second party- workman was suspended from his service with effect from 24-5-2007 and dismissed from service on 6-6-2007. The main allegation of the first party -management against the second party -workman based on disobedience, irregularity in service, indiscipline and unruly behaviour and negligence in his duties. The first party- management relied on some documents which are marked as Ext.M. 1 to Ext. M. 11/a, Ext. M. 1 is the warning letter issued to the workman on Dt. 24-11-2006. Ext.M.1 discloses that on 15-11-2006 at about 7.30 P.M. the second party -workman Shri Balajee Kumar Satapathy, misbehaved and threaten Mr. Ajay Patra, Senior Officer, Accounts without any appropriate reason. M.W.1 Sanjay Kumar Sahu stated in his evidence that the occurrence took place on 15-11-2006 at about 8.00 P.M. in the residence of Ajay Kumar Patra. But as per the written statement of the management the second party -workman misbehaved and threatened Mr. Ajay Kumar Patra on Dt. 11-11-2006 which contradicts to the letter Ext.M.9 submitted by Mr. Ajay Kumar patra, Ext.M.9 is the letter of Mr. Ajay Kumar Patra, Accounts Officer to the D.G.M. (P & A) of the management stating that on 15-11-2006 when he rushed to Saletax Office at 6.30 P.M. for way bill the second party -workman Mr. Satapathy came to me and forced me to take payment of Shri Mohan (Hire charges of vehicle). However, this occurred took place outside of the first party- management establishment. Nowhere it is elicited from Ext.M.9 that the second party -workman threatened Mr. Ajay Kumar Patra. Senior Accounts Officer in the alleged date time . Subsequently, on the written information of Mr. Ajay Kumar Patra, Senior Accounts Officer the management conducted enquiry after framing charges against him but it is surprised that in absence of the second party- workman, the management conducted enquiry and has not served any copy of the enquiry report. The second party -workman was not availed the proper opportunity to defend himself from such allegations. However, Ext.M 2 is the show cause letter issued to the workman on Dt. 24-5-2007 and the management has given him only 24 hours time to file show cause failing which stern disciplinary action would be taken against him by the management. Ext.M. 4 is the final reminder for enquiry against Mr. Balajee Kumar Satapathy. Ext. M.5 is the office order showing the constitution of Enquiry Committee to enquire over the matter. Ext. M.5 discloses that the management has issued a chargesheet to the second party -workman due to indiscipline acts committed by him. There is no other allegation reflected in Ext. M.5 against the second party -workman. Ext. M.6. is the report of Enquiry Committee. Ext. M. 7 is the document regarding Oriental Bank of Commerce. Ext. M.8 is the xerox copy of ledger account. From the evidence and documents on record it is clear that occurrence took place at outside the Company's premises in between the second party -workman and Mr. Ajay Kumar Patra, Senior Accounts Officer beyond the duty hour. The management has not examined

Ajay Kumar Patra, Senior Accounts Officer. In this regard the second party- workman Shri Balajee Kumar Satapathy has stated that on some personal matter he only asked Mr. Ajay Kumar Patra, Senior Accounts Officer and never threatened him with any dire consequences. Besides that there is no incriminating materials put to this witness to falsify his evidence on record. Although the representative of the management led allegations against the second party- workman but failed to prove the same. Rather the second party -workman has filed documents which are marked as Ext.W.1 to Ext.W.12 which are marked without objection and on admission by the first party- management.

10. The first party -management further made an allegation against the second party -workman that he was irregular in his duty and has not discharged his duty as a workman of the management. On the otherhand the second party- workman Mr. Balajee Kumar Satapathy filed some documents which are marked on admission, i.e. Ext. W.6. to Ext.W.12. It is further apparent from the evidence on record and documents that the attendance register Ext.M.10 which was under the custody of management was tampering on the portion, i.e. marked Ext.M.10/a. The second party- workman vehemently objected on this tampering in the attendance register and submitted that he was very much present on each date of his duty hour and disobeyed his duty as a workman to the knowledge of the management. He further submitted that he never disobeyed the order of the management, nor unruly nor neglected in his duty at any time rather he was discharging his duty as workman during his service period. He engaged himself fully on each of the direction made by the management in every sphere. So it is the specific evidene of the second party -workman that he rendered his service since 24-6-2006 in the establishment of the first party specially arranging of vehicles from outside sources and maintained repair of vehicles of the first party- management, purchasing rail tickets and rail berth for personnels of the first party -management by proceeding to counter of Jharsuguda Railway Station. He was also maintaining the first party's Guest House including Electrician's work, water and plumbing work attending guests which is purely a job of workman. The representative of the management submitted that the management collected the railway tickets etc. through the Agents but has failed to show any documents nor adduced evidence of any Agent to prove its plea. Rather the second party -workman has filed many documents to establish his case. Although the management has mentioned in the letter Dt. 20-5-2007 Ext. M. 3 that "your irregularities and unpunchual on duty not only cause inconvenience in work but it also undermines the norms of the factory discipline" but has not established such allegations against the second party -workman. It is the settled principles of law that the first party -management shall prove its case in a clear and cogent manner in order to establish its case. In the instant case although the management placed a bundle off allegations against the second party -workman but has failed to establish its case. Moreover from the evidence on record as well as the document it is cristal clear that the second party- workman has discharged his duty as a workman in a proper manner being directed by the management.

11. The management relied on the reported decisions AIR 1967 Supreme Court 678, 1961(2) H.R. 594, (1961) IILLJ 94 SC—

“The next contention on behalf of the company is with respect to the order of reinstatement of Mukherjee. The company’s case is that Mukherjee was discharged with effect from April 1, 1954. At that time the definition of the word “workman” under Section 2(s) of the Industrial Disputes Act did not include employees like Mukherjee who was a representative. A “workman” was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the otherhand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956. The nature of the duties of Mukherjee is not in dispute in this case and the only question, therefore, is whether looking to the nature of the duties it can be said that Mukherjee was a workman within the meaning of Section 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukherjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal’s conclusion that Mukherjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukherjee had no supervisory duties and had to work under the directions of his superior officers. That however would not necessarily mean that Mukherjee’s duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukherjee’s duties were mainly either clerical or manual. Therefore, as Mukherjee was not a workman his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We therefore, set aside the order of the tribunal directing reinstatement of Mukherjee along with other reliefs”.

12. It is the settled principle of law that if the nature of duties is manual or clerical then the person must be held to be a workman which comes under the purview of Section 2(s) of the Industrial Disputes Act. In the case in hand the second party- workman was discharging his duty as a workman. So he comes under the purview of Section 2(s) of the I.D. Act and this case is maintainable under the I.D. Act. Accordingly, the issue No. ii is answered.

13. *Issue No. (iii)*—In view of such facts and circumstances the first party -management has failed to establish its case. Accordingly, the second party- workman Shri Balajee Kumar Satapathy is entitled to get the relief. Issues are answered. Hence the award.

AWARD

The reference is answered on contest but without any cost. The action of the management of M/s Eastern Steels & Power Ltd., Lahandabud , P.O. H. Katapali, Dist. Jharsuguda in terminating the services of Shri Balajee Kumar Satapathy Personal Executive with effect from 6-6-2007 is illegal and unjustified. The first party -management is directed to reinstate the second party- workman Shri Balajee Kumar Satapathy in his job within two months from the date of publication of the Award in the *Orissa Gazette*.

Dictated and corrected by me.

S. MAHAPATRA

18-5-2011

Presiding Officer

Labour Court

Sambalpur

S. MAHAPATRA

18-5-2011

Presiding Officer

Labour Court

Sambalpur

By order of the Governor

T. K. PANDA

Under-Secretary to Government